

APPEAL NO. 041976  
FILED SEPTEMBER 28, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 7, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter, but is not entitled to SIBs for the fifth quarter. The claimant appeals the determination on the fifth quarter, contending that he did make a good faith effort to seek employment commensurate with his ability to work during the qualifying period for the fifth quarter. The respondent (carrier) asserts that sufficient evidence supports the hearing officer's determination that the claimant is not entitled to SIBs for the fifth quarter. There is no appeal of the hearing officer's determination that the claimant is entitled to SIBs for the fourth quarter.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue for the fifth quarter is whether the claimant attempted in good faith to obtain employment commensurate with his ability to work during the qualifying period. Section 408.142(a)(4) and Rule 130.102(b)(2). There are medical reports in evidence which reflect that the claimant had the ability to perform at least sedentary work or light work during the qualifying period for the fifth quarter. The evidence reflects that the claimant was not employed during the qualifying period for the fifth quarter and that he was not enrolled in a vocational rehabilitation program sponsored by the Texas Rehabilitation Commission or a private provider. The claimant's Application for [SIBs] (TWCC-52) for the fifth quarter does not document a job search in the first five weeks of the qualifying period for that quarter.

Rule 130.102(d)(5) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has provided sufficient documentation as described in subsection (e) of Rule 130.102 to show that he or she has made a good faith effort to obtain employment. Rule 130.102(e) provides that except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. Rule 130.102(e) then lists information to be considered in determining whether a good faith effort has been made. The hearing officer noted that the claimant failed to establish that he looked for work during every week of the qualifying period for the fifth quarter. The hearing officer found that the claimant failed to make a good faith effort to seek employment commensurate with his ability to work during the qualifying period for

the fifth quarter, and concluded that the claimant is not entitled to SIBs for the fifth quarter. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision that the claimant is not entitled to SIBs for the fifth quarter is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **MID-CENTURY INSURANCE GROUP** and the name and address of its registered agent for service of process is

**FRED B. WERKENTHIN  
100 CONGRESS AVENUE  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Daniel R. Barry  
Appeals Judge